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No. 05-1462

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IN THE

Supreme Court of the United States

CITY OF SANTA CLARITA,
Petitioner,
v.

COUNTY OF LOS ANGELES, CEMEX, INC., AND UNITED STATES BUREAU OF LAND MANAGEMENT,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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The Newhall County Water District, Sulphur Springs Union School District, and William S. Hart Union High School District[1] respectfully submit this *amici curiae* brief in support of the prayer of the City of Santa Clarita ("City") for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

INTEREST OF *AMICI CURIAE*[2]

Sulphur Springs Union School District and William S. Hart Union High School District (collectively, "Santa Clarita Schools") are public school districts organized under the laws of the State of California. Collectively, the Santa Clarita Schools represent nearly 25,000 students in grades kindergarten through the grade twelve throughout the Santa Clarita community. The Newhall County Water District ("Newhall WD") is a county water district organized under the laws of the State of California, supplying water to approximately

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[1] Pursuant to Supreme Court Rule 37.6, *Amici Curiae* state that no counsel for any party to this dispute authored this motion or this brief in whole or in part and no person or entity other than *Amici Curiae*, their members, or counsel, made a monetary contribution to the preparation or submission of this motion or this brief.

[2] The Santa Clarita Agencies received written consent from the City of Santa Clarita, the County of Los Angeles, and CEMEX, Inc., to file this brief. The United States Bureau of Land Management has consented to this filing, with the representation by counsel that written consent will follow.

30,000 persons throughout the Santa Clarita community. Both the Santa Clarita Schools and the Newhall County WD serve constituents both within the City and in unincorporated areas of the County of Los Angeles ("County") surrounding the City.

Despite the differing purposes and goals of the Santa Clarita Schools and the Newhall WD (collectively, "Santa Clarita Agencies"), the entities share a common interest in the CEMEX case now before this Court. The CEMEX Project ("Project") threatens tremendous health and economic impacts to the constituents served by the Santa Clarita Agencies, as well as their respective employees and, as applicable, students. The Santa Clarita Agencies stand to be directly impacted by the potential environmental effects of the Project, which are at the core of the City's challenge of the consent decree entered into between the County and CEMEX ("Consent Decree"). Consequently, the Santa Clarita Agencies will be directly affected by the outcome of the case currently pending before this Court, both in the potential adverse health effects to their employees and students, as well as the potential adverse economic impacts resulting from required remedial measures necessary to protect their students and employees from resulting environmental pollution. In addition, Newhall County WD pumps water downstream of the Project, such that it is vitally interested in an adequate review of the effects of the Project on the water supply.

More important to the issue before the Court, the Consent Decree in this case foreclosed necessary additional environmental review of the Project, thus denying the Santa Clarita Agencies crucial protection from the potentially devastating threats imposed by the Project. By excluding the City from the negotiations of the Consent Decree, the voices of those most affected by the impacts of the Project have been left unrepresented, and, consequently silenced by parties at best nominally interested in the consequences of their decisions. Such a practice has no place in federal jurisprudence.

SUMMARY OF ARGUMENT

The Santa Clarita Agencies wish to express their support for, and their desire to join in, the underlying arguments of the City in its Petition for Writ of Certiorari ("Petition"), filed before this Court on May 10, 2006. The Santa Clarita Agencies urge the Court to grant *certiorari* in this case, in light of the tremendous injustice inflicted by the termination of the rights of intervening third-party defendants, who, as a practical matter, are bound by consent decrees in which they have given no consent, reflecting settlements in which they had no voice. The circumstances presented within the City's Petition are representative of such injustices, as the rights of the City, and, by extension, the Santa Clarita Agencies, under existing state environmental law were terminated without an adversarial determination on the merits. Due

process demands that the interests of those most affected by the impacts of consent decrees be considered and heard before the binding consequences of such decrees (or in this particular case the Project) are thrust upon them. As such, justice requires that the Court consider this Case.

ARGUMENT

I. Application Of The Consent Decree To Bar The Defenses Of The City of Santa Clarita Has Violated The Rights Of The City Of Santa Clarita And All Of Those Whose Interests It Represents.

The Santa Clarita Agencies vehemently join in the request of the City that the Court grant the petition for writ of certiorari on the issue of whether the rights of a nonconsenting intervenor-defendant may be set aside by a consent decree entered into between a plaintiff and defendant who have, at best, minimum adverse interests in the underlying action.

In considering the Project under the California Environmental Quality Act ("CEQA"), the County was required to consult with affected agencies, prepare draft environmental reports, receive comments, hold hearings, and make certain required findings before otherwise approving the Project. *See generally* CAL. CODE REGS. TIT. 14, §§ 15080-15096 (2005). The proper process mandates

the opportunity for comments from not only the City, but also the Santa Clarita Agencies and other interested parties, which are to be reviewed and considered in conjunction with and before any consideration and approval of the Project.

Significant and damaging environmental impacts resulting from the Project, including effects on air quality, water quality, and traffic, all of which will have significant adverse effects on the abilities of the Santa Clarita Agencies to provide educational and water services to their respective constituents, would have been reviewed. Mitigation measures could then have been imposed on the Project, as feasible to avoid the adverse effects on the environment now complained of by the Santa Clarita Agencies and the City. CAL. CODE REGS. TIT. 14, § 15092 (2005).

Instead, the County, with a minimal interest in the potential harmful environmental impacts to be generated by the Project, and without any consultation with the City, the Santa Clarita Agencies, or any other party directly interested in the potential impacts, entered into a consent decree which foreclosed any further environmental review or consideration of impacts presented by the Project. In essence, the County ignored its responsibility to balance the economic benefits of the Project against the unavoidable environmental risks, CAL. CODE REGS. TIT. 14, § 15093 (2005), and blindly

determined that the "benefits" of the Project outweigh the environmental consequences, regardless of what those consequences might be.

The County's failure to represent the interests of Santa Clarita has been magnified by both the United States District Court and the Ninth Circuit Court of Appeal, which have both taken the further step of refusing the City, the party with a recognized interest as an intervenor as of right, any say in the Consent Decree that now determines their fate. Though the Consent Decree may not by its terms purport to "bind" the City or the Santa Clarita Agencies, its bypassing of the very environmental process in which the concerns of the City and other interested entities would be heard, considered, and addressed has nonetheless deprived the City, the Santa Agencies, and the citizens of Santa Clarita of vital rights under the law–all without representation.

II. Entry of the Consent Decree Without City Representation Has Deprived The City And Those Represented By Its Interests Of Significant Legal Rights Without Representation.

By its very nature as a intervenor-defendant as of right, the City represents an interest in the underlying action in this case that (1) will as a practical matter be impaired or impeded by the Consent Decree, and (2) is not

otherwise adequately represented by the County as the original defendant in this action. Fed Rule Civ. Proc. 24(a). The Ninth Circuit recognized the City's position when it reversed the District Court and mandated that the City be joined in the action as a intervenor-defendant by right.[3]

The Santa Clarita Agencies were situated such that resolution of the action between CEMEX and the County stood to impede or impair their environmental interests. The City, however, having been admitted into the action as an intervenor-defendant of right, adequately represented those interests–and thus represented the interest of the entire Santa Clarita community by its presence in the action. Moreover, the concerns of the City relative to the project, including air and water quality and traffic impacts, coincided with the concerns of the Santa Clarita Agencies.

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[3] Federal Rule of Civil Procedure Section 24(a) provides, in relevant part:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In light of the City's recognized status as a party representing interests not otherwise adequately represented by the defendant County, common sense would dictate that the City, as the representative of such interests and a recognized intervenor-defendant of right with rights as a full party to the action, should have been included in any settlement of the matter in dispute between the County and CEMEX. *See Alvardo v. J.C. Penney Co., Inc.*, 997 F.2d 803, 805 (10th Cir. 1993) (noting that intervenors are generally entitled to have claims litigated as if they were an original party).

The City should have been provided with a full opportunity to participate in the formulation of the proposed relief. *See United States v. City of Hialeah*, 899 F. Supp. 603, 611 (S.D. Fl. 1994). In the event settlement of the dispute was not possible, based upon the concerns represented by the City, then the defenses raised by the City should have been adjudicated before any action by the court to extinguish such defenses. *United States v. City of Hialeah*, 140 F.3d 968, 976-78, 983 (11th Cir. 1998).

The City, however, was not given such an opportunity. The County and CEMEX engaged in negotiations without the City. The two parties agreed upon the terms of the settlement to be outlined in the Consent Decree that thereafter would be binding on all parties. The County's agreement as to how it would

exercise its discretion to approve the Project and the foreclosure of any further environmental review essentially eliminated any rights of the City, or the Santa Clarita Agencies to consult with or raise concerns to be considered in such review.

As stated by the City within its Petition, the District Court could have allowed for the County and CEMEX to settle their issues, without terminating the rights of the City in the process. The settlement could have been structured not as a consent decree (which by its nature implies consent of all parties), but rather as a settlement between those two parties. Thereafter, the County could very well have stepped aside and allowed the City, at its discretion and at its cost, to litigate those interests not otherwise represented by the County.

Instead, the City, as a genuinely recognized party in the action, was ignored, and the consent decree was entered into and approved by the District Court without concern for the interests represented by the City.

III. Benefits Of Party Settlement Of Disputes Should Not Be Permitted To Overshadow Need To Ensure Fair Representation Of Interests Of All Parties.

The issues presented by the City in its Petition are not unique to this action, but rather present far-reaching questions in all disputes in which original plaintiffs and defendants potentially hold the power to terminate the interests of third-parties. The application of consent decrees to bind such third parties is a significant detriment to the fair execution of justice in the federal court system, and must be reversed.

The benefits offered by settlements and consent decrees cannot be disputed –including often early resolution of disputes, reduced litigation expenses, more efficient use of judicial resources, and avoidance of litigation risks. *See, e.g.*, Menger, Consent Decree Paradigms: Model Without Meaning, 29 B.C. L. Rev. 291, 327-31 (1988). Those benefits, however, should not be allowed to overshadow the very goal of the judicial system to provide not only expeditious, but fair, resolutions of cases in controversy. *See Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 95 (2002).

Such an overshadowing is particularly prevalent in cases such as this, in which the interests of third-party

intervening defendants or plaintiffs may so easily be ignored in favor of consent decrees entered into by the original litigants, who often may have more of an interest in the quick resolution of the dispute rather than full and fair adjudication of the interests presented within such litigation. Such circumstances would appear to often arise when the original defendant, such as here, is a public entity brought into an action not because of a direct interest in the controversy, but rather a mandated statutory requirement or regulation causing it to become involved despite its actual desires or interests. See Laylock, *Consent Decrees Without Consent: The Rights of Nonconsenting Third Parties*, 1987 U. Chi. Legal F. 103, 105-06 (1987) (hereinafter Laycock) (citing example of *Harrisburg Chapter of the ACLU v. Scanlon*, 500 Pa. 549 (1983); *see also City of Hialeah*, 140 F.3d, at 983-84; *United States v. City of Miami*, 664 F.2d 435, 442, 447; *Kirkland v. New York State Dept. of Correctional Services*, 711 F.2d 1117, 1125-28 (1983). Such entities often lack the financial, political, or personal motivation to fully adjudicate such litigation, preferring instead to settle the litigation in the cheapest and simplest manner possible provided such resolution allows it to satisfy its obligations under the law Laylock, at 105-06. The interest of such entities is essentially similar to that of a "stakeholder in an interpleader." *Id.*

Such interests are contrasted with those of the real parties in interest that not only desire that the

"stakeholder" public entity perform its obligations under the law, but that it does so in a manner such that all interests, or at least its personal or political interests, are at least considered, and thus protected.

In this case, County is largely a party due to its status as the governing agency charged with the approval of any permits for the Project, which is situated within the County's planning jurisdiction. Under CEQA, the County is mandated by State law to conduct proper environmental analysis before it may consider the approval of the Project. In this instance, however, it is that requirement that concerns the County–rather than the direct environmental impacts of the Project that will largely be felt by the City, the Santa Clarita Agencies, and the people all of these agencies serve.

Consequently, it is the City, and not the County, that is the party with the real interest in ensuring that adequate environmental analysis is conducted prior to any approvals of the Project. By excluding the City from the resolution of this matter through the Consent Decree, the real interests in the matter are ignored, in favor of the limited interest of the County.

The consequences to the non-consenting third parties are magnified by the judicial pretext that the third parties are not bound by the terms of the consent decree. In this particular case, it is true that the City is not, by

the terms of the Consent Decree, "bound" to behave or act in any certain way. Nevertheless, the City's rights are directly linked to the review under CEQA that was to have been conducted by the County. If the County has, by decree, bypassed such review–then City's right to intervene and defend the need for specific CEQA review for impacts caused by the Project is meaningless–and there is by definition no environmental process for which the City's interests may be heard.

Numerous examples of circumstances in which the rights and interests of third-party intervenors have been ignored or conceivably set aside by proposed consent decrees between plaintiffs and "stakeholder" defendants can be found in existing case law.

In *Southern California Edison Company v. Lynch*, 307 F 3d 794 (9th Cir. 2002), the complaining energy company, Southern California Edison ("Edison"), filed an action against California Public Utilities Commission ("CPUC"), seeking to recover certain wholesale energy costs during a rate-freeze period in which Edison was prohibited from passing on costs of purchasing wholesale energy costs on to consumers. *Id.* at 801-02. A consumer group, devoted to protecting the interest of residential and small-commercial consumers, intervened in the action, likely accurately anticipating that such consumers would ultimately pay the price of any settlement. *Id.* at 802. Edison and the CPUC in fact agreed to and obtained a

stipulated judgment, in which the CPUC agreed to allow Edison to apply inflated rates to consumers for a period of two years to recover its prior costs from its retail consumers. *Id.* In rejecting a challenge by the consumer group, the Ninth Circuit focused on the ability of the intervenor-defendant to prevent the original parties from settling, *id.* at 806-07, ignoring the fact that the consumer group, as an intervenor-defendant and party representing the interests of those who would be required to pay the price of the original parties settlement, had an cognizable interest in pursuing the litigation to adjudication on the merits. Instead, a regulatory entity, as the original defendant with little price to pay in terms of settlement on its own, was permitted to pass costs of settlement on to the non-consenting intervenor.

Similarly, with a different result, in *United States v. City of Miami*, 664 F.2d 435 (5th Cir. 1981), discrimination litigation was brought against the City of Miami on behalf of minority and female police applicants. *Id.* at 436. The US Attorney General and the City of Miami settled their dispute by way of a consent decree, which deprived members of the police union of certain rights under a contractual promotion procedure. *Id.* In that case, however, the court acknowledged the appropriateness of a consent decree only as to those settled issues that do not otherwise affect the rights of a nonconsenting party. *Id.* at 440. The remaining issues must otherwise be left to adjudication by the court, so that

a decision on the merits of those disputed issues may be reached. *Id.*

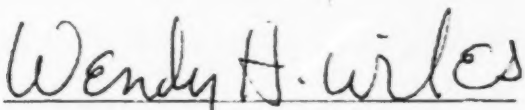
Additional examples of such attempts to bilaterally settle multi-party disputes can be found throughout the cases cited by the City. *See* Pet. at 18-19. In each of the circumstances, however, the potential damage of allowing neutral entities, merely seeking to follow or fulfill statutory or regulatory obligations, to settle and bind non-consenting third parties, who will bear the real burden of the settlement, is demonstrated. The injustice of any policy that would allow such a binding settlement to be placed upon non-consenting third-parties, when coupled with the split found in such cases applying such principals and the confusion in application of *Local Number 93, International Association of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501 (1986) cited by the City within its Petition, justify this Court's review of this issue to clarify the purpose and application of the consent decree designed to protect the rights and interests of all parties–and allow the adjudication of those rights truly in dispute.

CONCLUSION

For the above-stated reasons, the Court should accept this case for review.

Dated: June 16, 2006

Respectfully submitted,



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